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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA, PHOENIX

Twin City Fire Insurance Company

Case No.

Plaintiff,

COMPLAINT

vs.

DanceIt! Studio, LLC an Arizona
corporation; Alberto Valencia and Gabriela
Valencia, husband and wife; John Does 1-
10; Jane Does 1-10; ABC Partnership 1-10;
ABC Corporations 1-10; Inclusive,

Defendants.

For its Complaint, Twin City Fire Insurance Company (“Twin City”), alleges as follows:

GENERAL ALLEGATIONS

1. Twin City is incorporated in Indiana with its principal place of business in Connecticut. Twin City was and is licensed within the State of Arizona and is authorized by the Arizona Department of Insurance to conduct the business of insurance within this State.

2. Dance It! Studio, LLC (“Dance It! “) is an Arizona limited liability company with its principal place of business in Tucson, Arizona.

3. Upon information and belief, Gabriela Valencia and Alberto Valencia (the “Valencias”) are residents of Pima County, Arizona, and they are the owners of Dance It!. The articles of organization for Dance It! identifies Gabriela Valencia as the manager and Alberto Valencia as a 20% or more member.

4. This action is brought pursuant to the provisions of 28 U.S.C. § 2201, in that a controversy exists concerning the parties to be decided by the Court as a declaratory judgment.

5. A substantial part of the events giving rise to this lawsuit occurred within Arizona making venue appropriate in this Court pursuant to 28 U.S.C. § 1391.

6. The parties are of diverse citizenship, and jurisdiction is appropriate in this Court, pursuant to 28 U.S.C. § 1332.

7. The amount in controversy exceeds \$75,000.00 taking into account the probable cost of defending the *Perez* lawsuit discussed below, and the damages demanded by Andrea and Javier Perez in the lawsuit.

THE PEREZ LAWSUIT

8. On or about December 1, 2021, Andrea and Javier Perez (“Perez plaintiffs”) filed a lawsuit in Pima County Superior Court, case number C20215650, against Dance It! and the Valencias (the “Perez lawsuit”). A copy of the Complaint in the *Perez* lawsuit is attached as Exhibit 1.

9. In their Complaint, the Perez plaintiffs allege that the Valencias own and operate a dance and fitness studio located at 1350 W. Irvington Rd., Suite 180 in Tucson, Arizona known as DanceIt! Studio, LLC.

1 10. The Perez plaintiffs allege that DanceIt! offers dance fitness classes
2 including Zuma, kickboxing, yoga and step aerobics. The Perez plaintiffs allege that
3 Andrea Perez was participating in a kickboxing class at the premises on December 19,
4 2019, and was using an individual trampoline that was placed directly on the wood-like
5 flooring installed in the premises.
6

7 11. The Perez plaintiffs allege that the instructor at DanceIt! told participants in
8 the kickboxing class to jump onto an individual trampoline, perform an abdominal
9 “crunch” exercise, and then jump off the trampoline and land on the floor.
10

11 12. The Perez plaintiffs allege that as Andrea Perez was jumping on the
12 trampoline, it slipped on the wood-like flooring causing her to fall from the trampoline
13 backwards onto the floor.
14

15 13. The Perez plaintiffs allege that as a result of the accident, the plaintiff
16 suffered injuries to both of her wrists.
17

18 14. In their Complaint, the Perez plaintiffs allege that Dance It! and the
19 Valencias were negligent by failing to maintain their premises in a safe condition, and/or
20 by failing to warn Andrea Perez of a dangerous condition that existed on the premises,
21 and/or by failing to instruct, train and supervise instructors and students.
22

23 15. The Perez plaintiffs allege that this negligence is the direct and proximate
24 cause of the injuries to the wrists of Andrea Perez.
25

26 16. Twin City has agreed to defend Dance It! and the Valencias in the *Perez*
27 lawsuit pursuant to a reservation of rights, including the right to file this declaratory
28

1 judgment action seeking a declaration that Twin City does not owe any coverage for the
2 *Perez* lawsuit under the policy (described below) issued to the Valencias.

3
4 THE INSURANCE POLICY

5 17. Twin City issued an insurance policy to “Alberto & Gabriela Valencia,”
6 Policy Number 59 SBA BD3123 SC, effective November 2, 2019 through November 2,
7 2020 (the “Policy”).

8 18. The Policy has a “Liability and Medical Expenses” limit of \$1,000,000.

9 19. The Policy has a “Medical Expenses – Any one Person” limit of \$10,000.

10 20. The Policy does not identify Dance It! as a named insured or additional
11 insured.
12

13 21. The Policy affords Business Liability Coverage and Medical Expenses
14 Coverage, subject to the terms, conditions and exclusions of the Policy.
15

16 22. Various provisions in the Policy entirely preclude and otherwise limit
17 coverage for Dance It! and the Valencias for the allegations in the *Perez* lawsuit.

18 23. One such provision is “Exclusion – Trampoline and Gymnastic Rebounding
19 Devices,” form SS 50 02 09 01.
20

21 24. This exclusion provides as follows:

22 This endorsement modifies insurance provided under the
23 following:

24 BUSINESS LIABILITY COVERAGE FORM

25 This insurance does not apply to “bodily injury” arising out of
26 the:

- 27 a. ownership,
28 b. maintenance,
c. operation, or

d. use

of any trampoline or gymnastic rebounding device.

25. Another such provision is “Exclusion – Class, Athletic or Sports Participants,” form SS 50 54 09 01.

26. This exclusion provides as follows:

This endorsement modifies insurance provided under the following:

BUSINESS LIABILITY COVERAGE FORM

This insurance does not apply to “bodily injury” to any person while practicing for or participating in:

1. Any sports, physical education, gymnastics, martial arts or other athletic-related class or program of instruction; or
2. Any sports, athletic contest, exhibition, recital or any similar activity.

27. Both provisions referenced above preclude coverage for the *Perez* lawsuit in its entirety because Andrea Perez’s bodily injury arose out of the use of a trampoline and it occurred while she was participating in an athletic-related class or program of instruction.

28. Because of the operation of the above provisions, Twin City has no duty to defend Dance It! and the Valencias in the *Perez* lawsuit.

29. Because of the operation of the above provisions, Dance It! and the Valencias are not entitled to indemnity from Twin City under the Policy for any settlement or judgment in the *Perez* lawsuit.

30. The Policy also contains an exclusion applicable to Medical Expenses coverage . Specifically, the Policy provides as follows in Section B(2)(e) of the Business Liability Coverage Form:

2. Applicable To Medical Expenses Coverage

We will not pay expenses for “bodily injury”:

. . .

e. Athletic Activities

To a person injured while practicing, instructing or participating in any physical exercises or games, sports or athletic contests.”

31. This exclusion precludes Medical Expense coverage for the *Perez* lawsuit because Andrea Perez’s bodily injury occurred while she was participating in a physical exercises.

32. There is also no coverage for DanceIt! because the Policy does not identify Dance It! as a named insured or additional insured. Even if DanceIt! qualifies as an insured under the Policy (which it does not), the exclusions cited above preclude coverage for DanceIt! with respect to the *Perez* lawsuit.

PRAYER FOR RELIEF

Twin City requests that the Court enter judgment in its favor:

1. Declaring that Twin City has no duty to defend Dance It! and the Valencias in the *Perez* lawsuit;

2. Declaring that Dance It! and the Valencias are not entitled to indemnity from Twin City under the Policy for any settlement or judgment in the *Perez* lawsuit;

1 3. Awarding Twin City its attorneys' fees and costs incurred in defending the
2 *Perez* lawsuit;

3 4. Awarding Twin City its attorneys' fees and costs incurred in this lawsuit
4
5 pursuant to A.R.S. § 12-341.01 and any other applicable authority; and

6 5. For any other relief the Court deems appropriate.

7 DATED this 19th day of October, 2022.

8 LEWIS BRISBOIS BISGAARD & SMITH LLP
9

10 By: /s/ D. Andrew Bell

11 D. Andrew Bell

12 Attorneys for Plaintiff Twin City Fire Insurance Company
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EXHIBIT 1

EXHIBIT 1

FILED
Gary Harrison
CLERK, SUPERIOR COURT
12/1/2021 1:40:20 PM
BY: ALAN WALKER /S/
DEPUTY

Case No. C20215650
HON. JEFFREY L SKLAR

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF PIMA

ANDREA LARA PEREZ and JAVIER) No.
PEREZ, wife and husband;)
) **COMPLAINT**
Plaintiffs,)
)
vs.)
)
DANCEIT! STUDIO, LLC, an Arizona)
corporation; ALBERTO VALENCIA and)
GABRIELA VALENCIA, husband and wife;))
JOHN DOES 1-10; JANE DOES 1-10; ABC)
PARTNERSHIPS 1-10; XYZ)
CORPORATIONS 1-10; Inclusive,)
)
Defendants.)

Plaintiffs Andrea Lara Perez and Javier Perez, by and through undersigned counsel,
for their claims against Defendants DanceIt! Studio, LLC, Alberto Valencia, and Gabriela
Valencia, state and allege as follows:

1. Venue and jurisdiction are proper.
2. At all times relevant to this action, Plaintiffs Andrea Lara Perez and Javier
Perez were wife and husband residing in Pima County, Arizona.

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1 3. Defendant DanceIt! Studio LLC is an Arizona corporation authorized to do
2 business in Pima County, Arizona.

3 4. Upon information and belief, at all times relevant to this action, Defendants
4 Alberto Valencia and Gabriela Valencia were husband and wife and residing in Pima
5 County, Arizona.
6

7 5. Defendants John Does and Jane Does 1-10 are individuals or married couples
8 whose identities are presently unknown to Plaintiffs and who committed some or all of the
9 acts complained of herein. Leave of court is sought to Amend the Complaint to include the
10 correct names as may be required and as identified.
11

12 6. Defendants ABC Partnerships 1-10 and/or XYZ Corporations 1-10 are
13 Arizona or foreign corporations and/or general or limited partnerships whose identities are
14 presently unknown to Plaintiff, and who committed some or all of the acts complained of
15 herein. Leave of court is sought to Amend the Complaint to include the correct names as
16 may be required and as identified.
17

18 7. All relevant events took place in Pima County, Arizona.
19

20 8. Defendant Alberto Valencia and Gabriela Valencia own and operate a dance
21 and fitness studio located at 1350 W. Irvington Rd, Suite 180 in Tucson, Arizona known as
22 DanceIt! Studio LLC (the "Premises").
23

24 9. DanceIt! Studio LLC offers dance fitness classes including Zuma, kickboxing,
25 "Step and Tone," "MixxedFit," yoga, and step aerobics.

26 10. Upon information and belief, in September/October 2019, Defendants Alberto

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1 Valencia and Gabriela Valencia had wood-like flooring installed in the Premises after the
2 Premises flooded and the old flooring was damaged.

3
4 11. On December 19, 2019, Plaintiff Andrea Lara Perez participated in a
5 kickboxing class at the Premises.

6 12. As part of class programming, participants used individual trampolines that
7 were placed directly on the wood-like flooring.

8
9 13. During the class, the instructor told participants to jump onto a trampoline,
10 perform an abdominal “crunch” exercise, then jump off the trampoline and land on the floor.

11 14. As Plaintiff Andrea Lara Perez was jumping, the trampoline slipped on the
12 wood-like flooring, flew out from underneath her, and she fell backwards onto the floor.

13
14 15. Plaintiff Andrea Lara Perez landed on and fractured both her right and left
15 wrists.

16 16. Plaintiff Andrea Lara Perez sustained severe, permanent injuries to her wrists.

17 17. Defendants breached their duty to Plaintiff Andrea Lara Perez by failing to
18 properly maintain the Premises in a safe condition, and/or by failing to warn Plaintiff Andrea
19 Lara Perez of a dangerous condition that existed on the Premises, and/or failing to properly
20 instruct, train and supervise instructors and students.

21
22 18. Defendants knew or should have known that the wood-like flooring surface
23 was an unreasonably dangerous condition and presented a substantial risk of harm to
24 participants jumping on trampolines during classes offered by Defendant DanceIt! Studio
25 LLC.
26

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1 19. Defendants knew or should have known that without skid protection and/or
2 other barriers to prevent objects on the wood-like flooring from sliding, the flooring
3 constituted a dangerous condition placing participants at a substantial risk of harm of falling
4 when objects slid on the flooring surface.
5

6 20. Defendants were responsible for ensuring that reasonable periodic inspections
7 were conducted of the Premises to identify dangerous conditions and/or hazards on the
8 Premises and correct or remove any dangerous conditions and/or hazards from the Premises
9 in a prompt manner and failed to do so.
10

11 21. Defendants breached the standard of care by allowing a dangerous condition
12 to exist on the Premises and/or failing to warn of the dangerous condition.
13

14 22. As a direct and proximate result of the negligence of Defendants, Plaintiff
15 Andrea Lara Perez sustained serious injuries requiring medical and health care, past and
16 future, in an amount within the jurisdiction of this court to be proven at trial.
17

18 23. As a direct and proximate result of the negligence of Defendants and the
19 above-mentioned injures, Plaintiff Andrea Lara Perez incurred and continues to incur pain
20 and suffering, present, past, and future, in an amount within the jurisdiction of this court to
21 be proven at trial.

22 24. As a direct and proximate result of the negligence of Defendants, Plaintiff
23 Andrea Lara Perez suffered and will suffer lost wages.
24

25 25. As a direct and proximate result of the negligence of Defendants, Plaintiff
26 Javier Perez suffered loss of consortium.

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1 26. Pursuant to Ariz. R. Civ. P. 8(b)(2), Plaintiffs' damages are such as to qualify
2 for Tier 2 as defined by Ariz. R. Civ. P. 26.2(b)(1).

3 WHEREFORE, Plaintiffs are entitled to judgment in their favor and against
4 Defendant for the following relief:
5

6 1. For a fair and reasonable amount to properly compensate Plaintiff Andrea
7 Lara Perez for her past and future medical and health care expenses.

8 2. For a fair and reasonable amount to properly compensate Plaintiff Andrea
9 Lara Perez for her pain and suffering and emotional suffering, both past and future.
10

11 3. For a fair and reasonable amount to properly compensate Plaintiff Andrea
12 Lara Perez for her lost wages.

13 4. For a fair and reasonable amount to properly compensate Plaintiff Javier Perez
14 for his loss of consortium.
15

16 5. For costs incurred.

17 6. For such further and additional relief as the court deems proper under the
18 circumstances.
19

20 DATED this 1st day of December, 2021.

21 **BLEAMAN LAW FIRM, P.C.**

22 By Marc D. Bleaman /s/

23 Marc D. Bleaman

24 Elizabeth L. Warner

25 Attorneys for Plaintiff
26